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July 8, 2022

The Honorable Carol B. Amon
United States District Judge
Eastern District of New York
225 Cadman Plaza East
Brooklyn, New York 11201

*The government
is directed to
respond to this
application by
July 20, 2022
So Ordered.*

Re: United States v. Awais Chudhary, 21-CR-135 (CBA)

Dear Judge Amon,

Mr. Chudhary respectfully writes in response to the government's classified *ex parte*, sealed declaration filed on June 30, 2022. See ECF No. 94.

s/Carol B. Amon v
7/18/22

At the June 10, 2022 status hearing, this Court directed the government to make a stronger showing regarding the nature and seriousness of risks to the undercover witnesses to support the government's request that the undercover witnesses be permitted to testify under aliases and adopt other measures to protect their identity. The Court ordered any such information to be filed within two weeks. The defense requested an opportunity to respond to any arguments presented by the government, and the Court directed the defense to submit a response by July 1, 2022.

On June 30, 2022, the government filed a two-sentence notice, stating simply that it was filing "a classified *ex parte*, sealed declaration from the Federal Bureau of Investigation's Acting Assistant Director, Counterterrorism Division, in further support of its motion *in limine* for certain measures to protect the identity of testifying undercover law enforcement officers." See ECF No. 94.

Mr. Chudhary opposes the filing of this affidavit *ex parte*. The affidavit, presumably, contains the government's entire argument for permitting undercover law enforcement officers to use an alias or other protective measures. The government did not publicly file nor produce to defense counsel any non-*ex parte* filings containing arguments regarding the seriousness of risks to the undercover witnesses. Additionally, the government has provided no basis for filing the affidavit in support of its own motion *in limine* not only under seal, but also *ex parte*. Nor does the government's notice cite any authority for the submission of this declaration—and, thus, all argument on this issue—both *ex parte* and under seal.

While CIPA permits, in certain very limited circumstances, *ex parte* filings regarding the production of classified discovery, we are not aware of any authority for the filing of sealed, classified, *ex parte* arguments in connection with a government motion that directly bears on Mr.

Chudhary's right to a fair trial. The Court should order the government to provide a copy of the affidavit to defense counsel. We do not oppose the use of an appropriate protective order.

Thank you for your consideration.

Respectfully Submitted,

/s

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